

PATENT APPLICATION

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2950.08US02

Reitz et al.

Confirmation No.: 5465

Application No.: 09/266,202

Examiner: K. S. Lee

Filed: March 10, 1999

Group Art Unit: 2832

For: ZINC OXIDE PARTICLES

REQUEST TO REINSTATE APPEAL

FAX RECEIVED

Box AF  
Assistant Commissioner for Patents  
Washington, D.C. 20231

NOV 22 2002

TECHNOLOGY CENTER 2800

Sir:

In response to the Office Action of November 5, 2002, Applicants respectfully request reinstatement of the Appeal pursuant to the Appeal Brief filed on August 16, 2002. As described below, Applicants respectfully assert that the reopening of prosecution by the Examiner was inappropriate. A Petition To Withdraw the Office Action is filed with this Request.

REMARKS

Claims 1-5, 7-9 and 25-30 are pending. Applicants filed a Notice of Appeal on April 16, 2002 and an Appeal Brief on August 16, 2002 with a Petition For Extension of Time. Applicants note that an Advisory Action was mailed on August 6, 2002 for an Amendment After Final filed on March 28, 2002. Thus, due to the delay in receiving the Advisory Action, Applicants take the position that the filing of the Appeal Brief with an extension of time did not constitute a failure by Applicants to engage in reasonable efforts to conclude prosecution under 37 C.F.R. 1.704.

Under MPEP 1208.02, an examiner may reopen prosecution after appeal "to enter a new ground of rejection after appellant's brief or reply brief has been filed." However, the Office Action issued by the Examiner did not include a new ground of rejection. In fact, the rejections are essentially word for word identical to the rejection in the Office Action of January 16, 2002.